

\$~

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CS(OS) 1028/2015**

ATS INFRASTRUCTURE LIMITED Plaintiff

Through: Mr. Kapil Kher, Advocate with
Ms. Harsha, Advocate.

versus

PLATONIC MARKETING & ANR Defendants

Through: None

%

Date of Decision: 12th December, 2017

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

1. Present suit has been filed for permanent injunction restraining infringement of trademark, passing off, dilution of goodwill, unfair competition, rendition of accounts of profits, delivery up and for damages and compensation. The prayers made in the suit are reproduced hereinbelow:-

(i) Decree for permanent injunction restraining the Defendants, their directors, partners or proprietor as the case may be, its assigns in business, franchisees, licensees, distributors and agents from using, adopting, selling, offering for sale, advertising, directly or indirectly dealing in identical or similar goods/services,

or otherwise, under the trademark/service mark/trading style ATS, and the Infringing Domain Name, namely www.atsinfrastructure.com amounting to infringement of trademarks under Section 29 of the Trademarks Act with respect to registrations detailed in paragraph 13 of the Plaintiff.

(ii) Decree for permanent injunction restraining the Defendants, their directors, partners or proprietor as the case may be, their assigns in business, franchisees, licencees, distributors, and agents from using adopting, selling offering for sale, advertising, directly or indirectly dealing in identical or similar goods/services, or otherwise, under the trademark/service market/trading style ATS, and the infringing domain Name, namely www.atsinfrastructure.com amounting to passing off of the goods/services and/or business of the Defendants as those of the Plaintiff, unfair competition and dilution of goodwill, and from displaying the photographs of the various projects of the Plaintiff as are copied from the website of the Plaintiff.

(iii) A decree of mandatory injunction against the Defendants, directing them to immediately transfer to the Plaintiff, at their own cost, the Infringing Domain Name www.atsinfrastructure.com.

(iv) Decree for delivery up of all the goods, stationery, printed material etc. bearing the infringing Trade Name ATS, to an authorized representative of the Plaintiff for destruction.

(v) Order for rendition of accounts of profit illegally earned by the Defendants and a decree for the amount so found due, or in the alternate, a decree for damages of at least Rs. 50,00,000/- may be passed in favour of the Plaintiff and against the Defendants.

(vi) *An order for costs in the proceedings.*

(vii) *Pass/make such other orders and/or directions as may be deemed fit and proper in the facts and circumstances of the present case."*

2. At the outset, learned counsel for plaintiff gives up prayers (iv) and (v) of the prayer clause to the suit. The statement made by learned counsel for plaintiff is accepted by this Court and plaintiff is held bound by the same.

3. Vide order dated 20th April, 2015, this Court granted an ex-parte ad interim injunction in favour of the plaintiff and against the defendants. The relevant portion of the ex-parte injunction order is reproduced hereinbelow:-

"Consequently, till further orders, the defendants, their partners or proprietors as the case may be, their officers, servants and agents are restrained from using, adopting, selling, offering for sale, advertising, directly or indirectly dealing in identical or similar goods/ services or otherwise under trademark/service mark/ trade style ATS or any other trade mark/trade name, service mark, house mark or composite mark, logo or device, which is identical to and/or deceptively similar to or contains the plaintiff's trade name/trade mark ATS and infringing domain name, namely, www.atsinfrastructure.com and from transferring the domain name.

Let the provisions of Order 39 Rule 3 CPC be complied within a week."

4. Since defendants failed to appear despite service by publication, they were proceeded ex-parte vide the order dated 24th October, 2017.

5. In the plaint, it is stated that the plaintiff is a reputed real estate company engaged in and/or associated with developing various residential and other real estate projects in the North India and its brand ATS, to which the present suit pertains, is a trusted brand in today's real estate market. Plaintiff's various prestigious projects include ATS Greens I, Noida; ATS Greens II, Noida; ATS Village, Noida; ATS Paradiso, Greater Noida; etc. under which plaintiff has constructed and delivered about 14.59 million square feet of residential space and allegedly won the trust of over 5500 residents during past 17 years.

6. Learned counsel for the plaintiff states that the plaintiff and its brand ATS is presently promoting/developing projects which include ATS Triumph, Sector- 104 Dwarka Expressway, Gurgaon; ATS Kocoon, Sector-109, Dwarka Expressway, Gurgaon; ATS Tourmaline, Sector-109, Dwarka Expressway, Gurgaon; ATS Marigold, Dwarka Expressway, Gurgaon; ATS Marigold, Dwarka Expressway, Gurgaon; ATS Tangerine, Section-99A, Dwarka Expressway, Gurgaon, etc.

7. It is stated in the plaint that the trade mark/service mark/trading style ATS has been associated with it for the past about twenty years. Learned counsel for the plaintiff states that the plaintiff has got registered the trademark/service mark/trading style ATS in Class 19, 36 and 37 under the Trade Marks Act, 1999, which registration is valid and subsisting and has been extensively used in India with reference to their various real estate projects. The plaintiff has also filed trade mark applications with respect to trade mark/service mark/trading style ATS in all 1 to 45 classes under the provisions of

the Trade Marks Act, 1999 which have since been accepted by the Registrar of Trade Marks and certificates of registration issued.

8. In the plaint, it has been averred that the plaintiff and many of its group/associate companies have the word/brand ATS in their respective names, for example, ATS Infrastructure Limited; ATS Infrabuild Pvt. Limited; ATS township Private Limited; ATS housing Private Limited; ATS Reality, etc.

9. It is further averred that by virtue of continuous and extensive use, the same has acquired reputation and goodwill in the trade, and the public exclusively associates the trade mark/ service mark/ trading style ATS with the plaintiff. The plaintiff also does extensive business on the internet and owns the domain name registered as www.atsgreens.com. The plaint also mentions that during the financial year ended 2014-15, the plaintiff and its group earned Rupees 900 Crores.

10. It is averred in the plaint that the acronym “ATS” is associated with and exclusively belongs to the plaintiff and its group companies and no one else has any interest, even remotely, in the same. It is contended that the trade mark/service mark/trading style “ATS” constitutes an important and essential part of the corporate name of the plaintiff and the plaintiff group is recognized everywhere by this prefix.

11. Learned counsel for plaintiff states that the plaintiff purportedly came across the website of the defendants namely www.atsinfrastructure.com. He states that the defendants are

displaying the photographs of the various projects of the plaintiff and are not only using plaintiff's content, but are also selling and marketing plaintiff's properties. According to him, the said website is an alleged attempt to misappropriate the plaintiff's trademark/service mark/trading style 'ATS'. He states that the defendants have emblazoned the trade mark 'ATS' which clearly indicates that it is an attempt to appropriate illegal profits by showing a nexus/association with the plaintiff.

12. Learned counsel for plaintiff states that a perusal of the infringing trade mark and the infringing domain name shows that ATS is the only word of any trade mark significance. He states that the trade mark/service mark/trading style ATS features prominently in the infringing domain name and the same is identical/deceptively similar to the plaintiff's recognized domain name www.atsgreens.com.

13. Learned counsel for plaintiff states that the infringing trade mark and the infringing domain name is phonetically, visually, structurally and otherwise, identical and/or deceptively similar to the plaintiff's registered trade mark ATS and other marks and domain names of the plaintiff containing the word ATS as an essential feature. He further states that the use of the trade mark/service mark/trading style ATS and the infringing domain name bearing the word ATS for identical/allied and cognate services is bound to lead to confusion in the minds of the public since the defendants are displaying and offering for sale the flats, plots, villas developed and being developed by the plaintiff.

14. He states that the adoption and use of the trade mark/service mark/trading style ATS, and the infringing domain name for the defendants in their business activities or otherwise constitutes infringement/violation of the statutory rights of the plaintiff in the trade mark/service mark/trading style ATS and other composite marks including the word ATS under Section 29 of the Trade Marks Act, 1999. He lastly states that the same is also likely to erode the uniqueness and exclusivity associated with the plaintiff's business activities, assiduously built up over so many years and will also lead to the assumption by the users of the internet that the defendants are associated with or bear some nexus to the plaintiff.

15. The plaintiff has filed its ex-parte evidence by way of affidavit of Mr.Amit Asthana (PW1). The plaintiff's witness has proved its promotional material as Ex.PW1/3 (Colly) and presentations as Ex.PW1/4 (Colly). The PW1 has further proved the certificates of registration of the trade mark 'ATS' and other composite marks of the word "ATS" as Ex.PW1/5 (Colly), pending Trade Mark applications for the trade mark 'ATS' and other composite marks of 'ATS' a Ex.PW1/6 (Colly) and certificate from Chartered Accountants of plaintiff giving details of the turnover of the plaintiff as Ex.PW1/7. The witness has also proved Screenshots from the website of the plaintiff as Ex.PW1/8 (Colly).

16. Having heard learned counsel for plaintiff as well as having perused the papers, this Court is of the view that due to extensive use over substantial period of time, the plaintiff's 'ATS' mark has acquired reputation and goodwill in India.

17. From the evidence on record, it is apparent that without any explicit permission or authorisation to use the plaintiff's trade mark/service mark/trading style 'ATS', the defendants have malafidely copied the trademark 'ATS' of the plaintiff and are running a website www.atsinfrastructure.com.

18. Further, as the plaintiff's evidence has gone unrebutted, said evidence is accepted as true and correct. The Supreme Court in ***Ramesh Chand Ardawatiya Vs. Anil Panjwani, AIR 2003 SC 2508*** has held as under:-

"33.In the absence of denial of plaintiff averments the burden of proof on the plaintiff is not very heavy. A prima facie proof of the relevant facts constituting the cause of action would suffice and the court would grant the plaintiff such relief as to which he may in law be found entitled. In a case which has proceeded ex parte the court is not bound to frame issues under Order 14 and deliver the judgment on every issue as required by Order 20 Rule 5. Yet the trial court should scrutinize the available pleadings and documents, consider the evidence adduced, and would do well to frame the "points for determination" and proceed to construct the ex parte judgment dealing with the points at issue one by one. Merely because the defendant is absent the court shall not admit evidence the admissibility whereof is excluded by law nor permit its decision being influenced by irrelevant or inadmissible evidence."

19. Consequently, the allegation of the plaintiff that the trademark 'ATS' used by the defendants amounts to infringement of plaintiff's trademark/service mark/trading style is correct. The use of the impugned mark by the defendants was bound to cause incalculable losses, harm and injury to the plaintiff and immense public harm.

20. Accordingly, present suit is decreed in accordance with the prayers (i), (ii) and (iii) of the plaint along with the actual costs incurred by the plaintiff. The cost shall, amongst others, include the lawyers' fees as well as the amounts spent on purchasing the court fees. Registry is directed to prepare a decree sheet accordingly.

MANMOHAN, J

DECEMBER 12, 2017

js/rn

